

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA,)	
)	The Honorable Liam O’Grady
Plaintiff,)	
)	Case No. 1:12-cr-00003-LO
v.)	
)	
KIM DOTCOM, <i>et al.</i>)	
)	
Defendants.)	

MOTION OF INTERESTED PARTY KYLE GOODWIN
FOR RULING ON PENDING MOTION

Interested Party Kyle Goodwin, by his attorneys, requests that this Court rule on Mr. Goodwin’s pending Motion for the Return of Property (ECF No. 90). In support of this motion, Mr. Goodwin states as follows:

Kyle Goodwin owns and operates a sports videography business in Ohio. In 2011 and 2012, he used the Megaupload website to store digital video generated in the course of his business. On January 19, 2012, the government executed search warrants and effectively seized more than 1,000 servers owned by Carpathia Hosting, which Megaupload had leased and on which it most likely stored Mr. Goodwin’s data and that of other customers. As a result of the government’s actions, Mr. Goodwin and many other former Megaupload users lost access to their valuable data, and that data remains inaccessible today. Mr. Goodwin (through counsel) participated in a hearing and a mediation in the spring of 2012. On May 25, 2012, Mr. Goodwin filed a Motion for the Return of Property pursuant to 18 U.S.C. § 1963 and Federal Rule of Criminal Procedure 41(g) (ECF No. 90). In that motion, Mr. Goodwin requested that the Court exercise its equitable authority to fashion a process by which former Megaupload users could

retrieve their data from the Carpathia servers. That motion is fully briefed. On October 30, 2012, pursuant to the Court's request, Mr. Goodwin filed a proposed process for the return of users' data (ECF No. 135).

Over three years later, on August 21, 2015, Mr. Goodwin (through counsel) reiterated his request in a response to a renewed motion for protective order filed by QTS Realty Trust, Inc. ("QTS"), the owner of Carpathia Hosting (ECF No. 220). On October 29, 2015, the Court ordered all of the interested parties to answer a set of questions regarding the status of the Carpathia servers and the possibility of access to users' data (ECF No. 229). Mr. Goodwin filed a response to those questions (ECF No. 235) in which he reiterated his request for equitable relief. QTS filed a response at that time as well (ECF No. 232), stating that "there is a high likelihood that the disk drives, on which the data presumably reside, will experience high failure rates," in part because "the servers have been sitting idle for nearly four years in various environments."

Finally, on June 27, 2016, all of the interested parties to this matter and in two related civil cases held a meet and confer before Magistrate Judge Anderson, at which they reiterated essentially the same positions they took in 2012. Mr. Goodwin again appeared through counsel at the meet and confer. Magistrate Judge Anderson did not rule on either Mr. Goodwin's motion or QTS's motion.

Mr. Goodwin's motion remains pending. Further delay may mean the complete loss of Mr. Goodwin's valuable property and that of other former Megaupload users.

WHEREFORE, Interested Party Kyle Goodwin respectfully requests that the Court rule on the pending Motion for Return of Property (ECF No. 90) as soon as the Court's schedule permits.

Dated: October 18, 2016

Respectfully submitted,

/s/ John S. Davis

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Attorneys for Interested Party Kyle Goodwin

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2016, the foregoing was filed and served electronically by the Court's CM/ECF system upon all registered users, upon all counsel of record.

Dated: October 18, 2016

/s/ John S. Davis

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